

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC § Civil Action No. 6:12-CV-499 MHS
Plaintiff, §
§

v. §
§

TEXAS INSTRUMENTS, INC. §
Defendants §

BLUE SPIKE, LLC, § Civil Action No. 6:12-CV-576 MHS
Plaintiff, §
§

v. §
§

AUDIBLE MAGIC CORPORATION, §
FACEBOOK, INC., MYSPACE, LLC, §
SPECIFIC MEDIA, LLC, §
PHOTOBUCKET.COM, INC., §
DAILYMOTION, INC., §
DAILYMOTION S.A., SOUNDCLOUD, §
INC., SOUNDCLOUD LTD., MYXER, §
INC., QLIPSO, INC., QLIPSO MEDIA §
NETWORKS LTD., YAP.TV, INC., §
GOMISO, INC., IMESH, INC., §
METACAFE, INC., BOODABEE §
TECHNOLOGIES, INC., TUNECORE, §
INC., ZEDGE HOLDINGS, INC., §
BRIGHTCOVE INC., §
COINCIDENT.TV, INC., ACCEDO §
BROADBAND NORTH AMERICA, §
INC., ACCEDO BROADBAND AB, §
AND MEDIAFIRE, LLC §
Defendants. §

**DECLARATION OF CHRISTOPHER HIGGINS IN SUPPORT OF AUDIBLE MAGIC'S
MOTION TO COMPEL**

I, Christopher Higgins, declare under penalty of perjury that the following is true and correct:

1. I am an attorney at the law firm Orrick, Herrington & Sutcliffe, LLP,

counsel of record for defendants Audible Magic Corp. (“Audible Magic”) and a number of its customers accused as defendants in this case on the basis of Audible Magic’s technology. I have personal knowledge of the facts set forth in this declaration, or access to information and records allowing me to confirm these facts. If called as a witness, I could testify competently to these facts under oath.

2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter sent by Audible Magic to Blue Spike dated May 9, 2014.

3. Attached hereto as **Exhibit 2** is a true and correct copy of an email sent by Gabriel Ramsey to Randall Garteiser dated May 18, 2014 and a document attached to that email entitled “Further Clarifying Document Regarding Moskowitz and Blue Spike Document Production Obligations.”

4. Attached hereto as **Exhibit 3** is a true and correct copy of an email from Randall Garteiser to Gabriel Ramsey dated May 23, 2014.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a letter sent by Audible Magic to Blue Spike dated May 28, 2014.

6. Attached hereto as **Exhibit 5** is a true and correct copy of an email sent by Chris Higgins to Randall Garteiser dated June 2, 2014.

7. Attached hereto as **Exhibit 6** is a true and correct copy of an email from Chris Higgins to Randall Garteiser dated June 10, 2014.

8. Attached hereto as **Exhibit 7** is a true and correct copy of an email from Randall Garteiser to Chris Higgins dated June 12, 2014.

9. Attached hereto as **Exhibit 8** is a true and correct copy of an email from Chris Higgins to Randall Garteiser dated June 15, 2014.

10. Attached hereto as **Exhibit 9** is a true and correct copy of an email from

Randall Garteiser to Chris Higgins dated June 18, 2014.

11. Attached hereto as **Exhibit 10** is a true and correct copy of Audible Magic's First Set of Interrogatories to Blue Spike served on April 2, 2014.

12. Attached hereto as **Exhibit 11** is a true and correct copy of Blue Spike's Objections and Response to Audible Magic's First Set of Interrogatories dated May 16, 2014.

13. Attached hereto as **Exhibit 12** is a true and correct copy of an email from Randall Garteiser to Chris Higgins dated June 6, 2014.

14. Attached hereto as **Exhibit 13** is a true and correct copy of an archived copy of Blue Spike's My Shopify webpage offering for sale the Giovanni Abstraction Machine as late as December 13, 2013. Obtained at <https://web.archive.org/web/20131213022122/http://blue-spike.myshopify.com/>, last visited May 27, 2014.

15. Attached hereto as **Exhibit 14** is a true and correct copy of a litigation hold letter sent from Randall Garteiser to Audible Magic Corp. dated August 28, 2012

16. Attached hereto as **Exhibit 15** is a true and correct copy of a letter sent from Randall Garteiser to Gabriel Ramsey outlining the broad scope of discovery sought by Blue Spike, dated April 30, 2014.

17. In response to Blue Spike's document production demands and in order to comply with the Local Rules, Audible Magic preserved and produced to Blue Spike over 2.4 million documents. These documents include the contents of old backup tapes, email and paper communications, historical business information, documents about Muscle Fish's interactions with Blue Spike and inventors Moskowitz and Berry, product information from inception of Muscle Fish and Audible Magic to the present, information about the accused products and source code.

18. On June 23, 2014 I spoke with counsel for Blue Spike, Peter Brasher,

regarding Blue Spike's deficient document production and insufficient interrogatory responses. Mr. Brasher agreed that certain issues remain ripe for Audible Magic's motion to compel. I agreed to permit Blue Spike until noon on June 24, 2014 to produce the documents requested by Audible Magic and provide supplemental responses to Audible Magic's Interrogatories. Attached hereto as **Exhibit 16** is a true and correct copy of an email sent by Peter Brasher to me around noon on June 24, which failed to give a date for the production of documents or interrogatory responses, instead giving Blue Spike another unilateral extension to supplement.

19. During the afternoon of June 24, Blue Spike produced a total of 22 pages to Audible Magic. This production consisted of three documents: an agreement between Muscle Fish and Blue Spike dated December 1998, an interview of Audible Magic's CEO Vance Ikezoye published on screenplaysmag.com in 2007, and a statement of Mr. Ikezoye delivered to the House Science and Technology Committee on or around June 5, 2007.

20. Attached hereto as **Exhibit 17** is a true and correct copy of Blue Spike's Supplemental Objections and Response to Audible Magic's First Set of Interrogatories dated June 25, 2014.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct based on my own personal knowledge.

Executed on June 26, 2014 in Washington, District of Columbia.



Christopher Higgins